



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: James LaMantia
File: B-245287
Date: December 23, 1991

James LaMantia for the protester,
Paul M. Fisher, Esq., and Paul M. Sullivan, Esq., Department
of the Navy, for the agency,
Anne B. Perry, Esq., Glenn Wolcott, Esq., and Paul
Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest concerning agency's failure to solicit protester for appraisal services is sustained where record shows that agency deliberately denied the protester the opportunity to submit a proposal based on an unexplained requirement that appraisers belong to a particular association.

DECISION

James LaMantia protests the award of a contract to Cowell & Co., Inc. under request for proposals (RFP) No. N62742-91-RP-00055, issued by the Department of the Navy for appraisal services to establish rental rates for Navy and Department of the Air Force family quarters on Guam. LaMantia contends that the Navy unreasonably refused to permit it to compete for the appraisal contract.

We sustain the protest.

Civilian employees and other eligible personnel are provided housing for which occupants pay fair market rent for their tenancy and the determination of fair market rent is made by the command administering the housing, based upon an approved real estate appraisal. The contract in question was awarded to obtain such appraisals for several housing units.

The Navy commenced this solicitation process by convening a "pre-selection committee" on June 14, 1991; the task of this committee was to select at least three firms to be solicited for proposals. This committee considered six firms, one of which was LaMantia, and chose to permit four of them to

submit proposals. The determination to permit submission of proposals was based on whether or not the firm had employees who were members of the Appraisal Institute and because LaMantia did not, that firm was not permitted to compete.

On June 25, the four pre-selected firms were sent letters, which enclosed a copy of the proposed contract, and were asked to submit proposals. Two firms submitted proposals, one of which was Cowell. A selection and award board met on July 29 to consider these proposals, and recommended award to Cowell at its offered price of \$21,500. After approval of this recommendation, award was made to Cowell on August 2.

The contract required submission of a completed report by September 30. Early in August, two Cowell employees traveled to Guam to commence performance of the field work which constituted approximately 70 percent of the contract performance. Cowell had nearly completed the field work by August 19, the date on which LaMantia filed this protest. Since the protest was filed more than 10 days after the award, performance was not stayed and the contract is now essentially complete.

LaMantia alleges that despite its repeated attempts to get the agency to send it a solicitation, both before the pre-selection committee met and after, no solicitation was provided and it was not allowed to compete. LaMantia complains that the Navy violated the Federal Acquisition Regulation (FAR) by pre-selecting a group of competitors based on an arbitrary requirement of membership in the Appraisal Institute. LaMantia argues that there are other equally competent associations of appraisers, such as the American Society of Appraisers, of which its staff are members, and that the agency's actions here improperly restricted competition.¹

The Competition in Contracting of 1984 (CICA) requires procuring agencies to obtain full and open competition through the use of competitive procedures. 10 U.S.C. § 2304 (1988). "Full and open competition" is defined as meaning

¹The agency argues that LaMantia's protest is untimely because the system it used in this procurement "was well known to Mr. LaMantia long before the instant acquisition began and years before his initial inquiry to [the Navy] in which he sought to participate in the instant procurement." We find no merit in the agency's argument since it does not suggest that, more than 10 days before filing its protest, LaMantia knew it would be precluded from competing based on the fact that its staff were not members of the Appraisal Institute. See 4 C.F.R. § 21.2(a)(2) (1991).

that all responsible sources are permitted to submit bids or proposals on a procurement, 10 U.S.C. § 2302(3). In enacting CICA, Congress expressed its "strong belie[f] that the procurement process should be open to all capable contractors who want to do business with the Government." See House Conference Rep. No. 98-861, 98th Cong., 2d Sess. 1422 (June 23, 1984). Accordingly, we must give careful scrutiny to an allegation that a particular contractor has not been provided an opportunity to compete for a particular contract. Trans World Maintenance, Inc., 65 Comp. Gen. 401 (1986), 86-1 CPD ¶ 239.

The agency states that its \$21,500 estimate for this acquisition was "well within the small purchase limitation of \$25,000." While this suggests that the standards applicable to small purchases should be applied, we find that the agency failed to comply with even CICA's less stringent requirements applicable to small purchase procedures. In conducting procurements under small purchase procedures, CICA requires agencies to obtain competition "to the maximum extent practicable." 10 U.S.C. § 2304(g); J. Sledge Janitorial Serv., 70 Comp. Gen. 307 (1991), 91-1 CPD ¶ 225. In implementing this statutory requirement, the FAR requires that contracting officers solicit quotations from a reasonable number of qualified sources to ensure that the purchase is advantageous to the government, price and other factors considered. FAR § 13.106(b)(1); California Properties, Inc., B-232323, Dec. 12, 1988, 88-2 CPD ¶ 581. Generally, a solicitation of three suppliers is sufficient. FAR § 13.106(b)(5); J. Sledge Janitorial Serv., supra. It is not sufficient, however, where other responsible sources request the opportunity to compete; in those circumstances, such parties should be afforded a reasonable opportunity to participate in the procurement. Id. In considering a protest that a potential offeror was excluded, we examine whether the agency made a deliberate or conscious attempt to preclude the protester from competing and, if so, whether the agency's action was reasonably based. See, e.g., J. Sledge Janitorial Serv., supra. Since it is clear that the agency deliberately excluded the protester from the competition, the question presented is whether the agency acted reasonably in so doing. We find it did not.

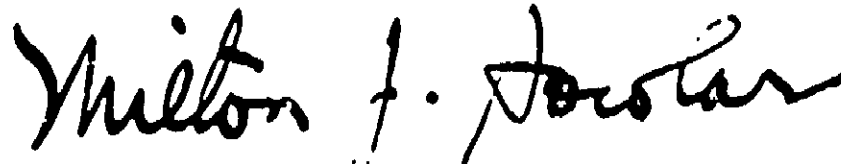
It is not disputed that the sole justification for excluding LaMantia from the competition was the fact that its staff were not members of the Appraisal Institute. The pre-selection committee's determination is based upon the following analysis:

"The appraisal will be fairly complex. Also, it will come under close scrutiny by the various affected residents of the family housing. FAA tenants appealed the rental rates established by the previous appraisal and a FAA representative has already made several telephone inquiries concerning this appraisal. For these reasons, the Pre-Selection Committee determined that the contract should be awarded to a firm which is recognized as having very high standards, i.e., firms where the staff are members of the Appraisal Institute. Institute membership will lend credibility to the appraisal, especially during an appeal process."

We do not object to the agency's desire to select an awardee that was "recognized as having very high standards." However, the record provides no explanation as to why the Navy concluded that only members of the Appraisal Institute were so qualified. LaMantia asserts that membership in at least one alternative organization, the American Society of Appraisers, would have equally satisfied the agency's needs. In this regard, the absence of an endorsement by a particular private organization should not automatically exclude offers that might otherwise equally meet a procuring agency's needs. See Advance Mach. Co., B-219766, Nov. 5, 1985, 85-2 CPD ¶ 526; Stabbert and Assocs., Inc., B-218427, June 17, 1985, 85-1 CPD ¶ 692. Since the record here contains no explanation regarding the basis for the agency's conclusion that only Appraisal Institute members would meet its needs, we have no basis from which to conclude that the agency's deliberate exclusion of LaMantia was reasonable. See American President Lines, Ltd., B-236834.3, July 20, 1990, 90-2 CPD ¶ 53.

The protest is sustained.

Since performance of this contract is essentially complete, we cannot recommend corrective action. However, we find the protester entitled to the costs of filing and pursuing its protest. 4 C.F.R. § 21.6(d)(1).



Acting Comptroller General
of the United States